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IN THE

Supreme Court of the United States

October Term, 1944.

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney-General of the State of New York,

Appellees.

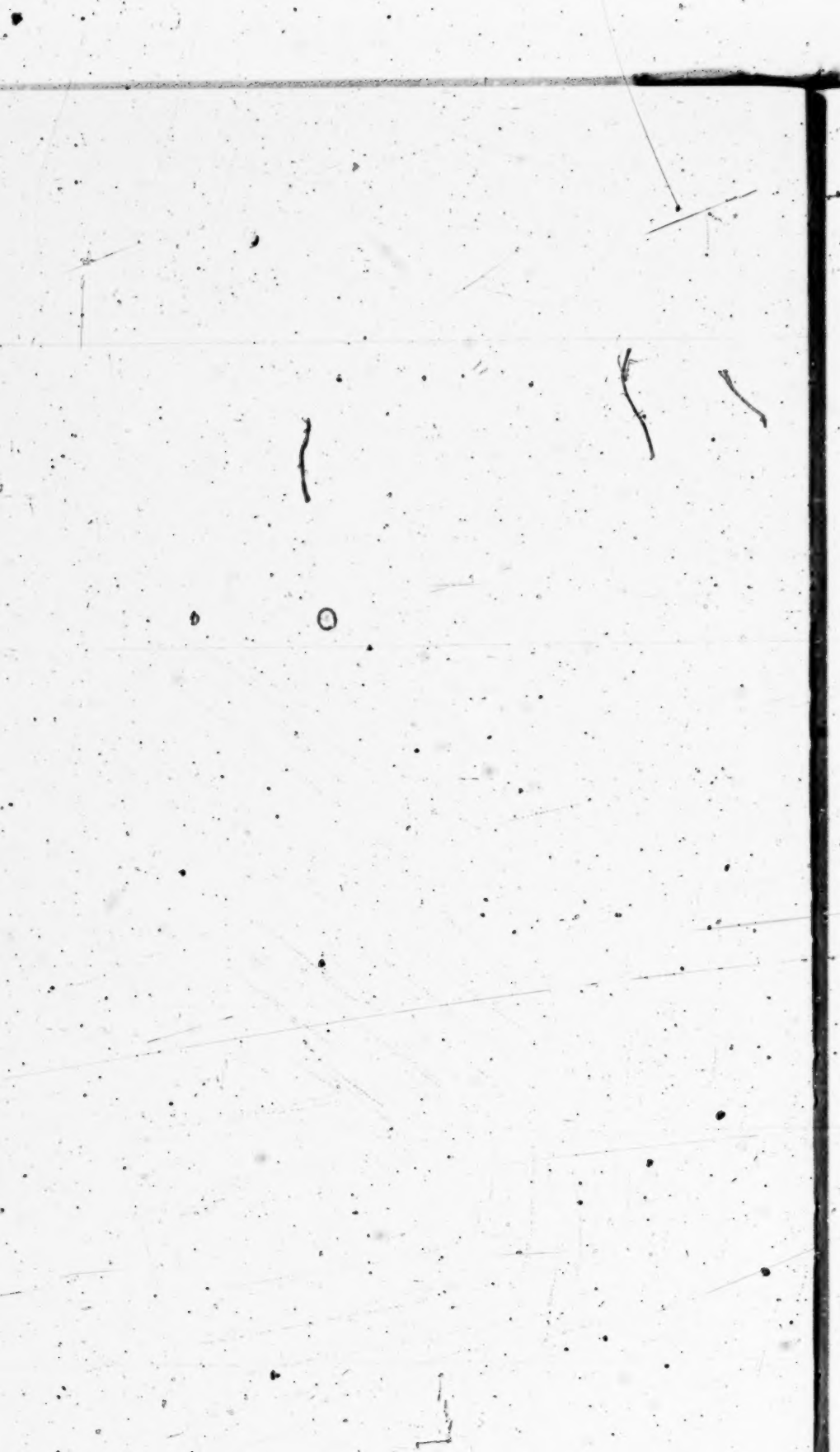
APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS THE APPEAL OR AFFIRM THE JUDGMENT APPEALED FROM.

DANIEL J. DUGAN,
Counsel for Appellant.

ISADORE BOOKSTEIN,
of Counsel.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.



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APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' MOTION TO DISMISS THE APPEAL OR AFFIRM THE JUDGMENT APPEALED FROM.

Statement.

To the Honorable the Supreme Court of the United States:

The appellant submits this brief under the related provisions of paragraph 3 of Rule 7 and paragraph 3 of Rule 12 of the Rules of this Court, the appellees having included in their typewritten statement opposing jurisdiction a motion to dismiss or affirm.

Appellant begs leave to direct the court's attention to its jurisdictional statement filed herein and to the cases cited in support thereof which are believed to sustain jurisdiction.

The federal questions presented under the Constitution of the United States upon the postoffice and post-roads clause (Article I, Section 8, Subdivision 7) and the due process clause of the Fourteenth Amendment have not been previously presented to or decided by this Court in similar circumstances or in a setting like this cause presents. The questions raised are both novel and important and as applied to the appellant, a membership corporation, and its members, present for determination a new experiment in State legislation of a delicate matter in the field of sociology closely analogous to the personal freedoms guaranteed in the Federal Constitution. They are important because of the limitations sought to be laid on individual liberty, the liberty of contract and the ownership of property.

The question of discrimination when applied to the case at bar is a sociological matter which, in the absence of a constitutional grant from the people to the government, cannot be regulated under the State Police Powers. Such discrimination is not unjust. It is a preference causing no injustice to anyone.

It concerns a social relationship which must rest on voluntary action. The law cannot coerce its performance. We are all left free to choose. This is a personal and constitutional right beyond the power of legislation. The choice is inherent in the person. Tolerance may broaden the choice and benevolence may soften to the point of common acceptance. Education and the spirit of Christianity may efface

the thought of social differences. Coercive legislation is not the remedy.

Under the postoffice and post-roads clause exclusive power to regulate and control the vast postal system in all its ramifications and details was given to the Federal Government. In the field of the postal system the State is excluded from legislating. The prohibition of State action rests "not on any consideration of degree but on the entire absence of power on the part of the States to touch the instrumentalities of the United States" (Opinion of Justice Brandeis in Gilbert v. Minnesota, 254 U. S. 341).

It is respectfully submitted, that the important points which this case presents require examination, analysis and exposition calling for printed and extended argument.

Summary of Argument.

1. As applied to the appellant, its division and branch associations and its members, Section 43 and the related Sections 41 and 45 of the Civil Rights Law of the State of New York are invalid as offending the due process clause of the Fourteenth Amendment to the Constitution of the United States because such laws constitute an arbitrary, unreasonable and capricious regulation of the right of selection to membership and an abridgment of the property rights and the right to liberty of contract of the appellant, its division and branch associations and members.

2. Is an invasion of and is in contravention to Article I, Section 8, Subdivision 7 of the Constitution of the United States.

3. The procedure in this case for declaratory judgment with prayer for injunctive relief presents a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Article III, Sections 1 and 2).

In our Jurisdictional Statement and Cases Cited to Sustain Jurisdiction we have cited the following cases, and analyzed some of them:

Under the Fourteenth Amendment:

Coleman v. Miller, 307 U. S. 433
Coppage v. Kansas, 236 U. S. 1
Hague v. C.I.O., 307 U. S. 496
Hall v. DeCuir, 95 U. S. 485
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In view of the foregoing it is respectfully submitted that this Honorable Court has jurisdiction of the appeal, that substantial constitutional questions are presented and that the motion to dismiss or affirm should be denied and probable jurisdiction noted.

RAILWAY MAIL ASSOCIATION,
Appellant.
By DANIEL J. DUGAN,
Its Counsel.
ISADORE BOOKSTEIN,
Of Counsel.